

# State of Colorado



Bill Owens  
*Governor*

Stacy L. Worthington  
*Board Director*

## DPA

Department of Personnel  
& Administration

State Personnel Board  
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### Meeting Minutes December 16, 2003

The State Personnel Board met in public session on Tuesday, December 16, 2003, at the Colorado Department of Public Health and Environment, 4300 Cherry Creek South Drive, Building A, First Floor - Sabin Room, Denver, Colorado 80246.

The meeting was called to order by Chair Joyce Lottner at approximately 9:35 a.m. In addition to Ms. Lottner, Board members Diedra Garcia, Elizabeth Salkind, and John Zakhem were present. Linda Siderius arrived at 9:55 a.m.

Stacy L. Worthington, Board Director; First Assistant Attorney General Richard Forman, Board Counsel; and Jane Sprague, Legal Assistant, were present.

#### **I. REQUESTS FOR RESIDENCY WAIVERS**

##### **A. December 1, 2003 Report on Residency Waivers**

There were no requests for residency waivers this month.

#### **II. PENDING MATTERS - PETITION FOR DECLARATORY ORDER**

##### **A. Gary Berlin v. Department of Natural Resources, Division of Wildlife, State Personnel Board case number 2004D001.**

Mr. Zakhem moved to issue a declaratory order that the residency waiver that was issued in 2001 for this position is no longer in effect and requiring the agency to request a new residency waiver for this position, if the agency wishes to recruit out-of-state. Ms. Garcia seconded the motion. Before voting, the Board considered the following matters, among others: whether a declaratory order will clarify the applicability of statute or Board rule or order to the petitioner; whether a declaratory order will terminate the uncertainty or controversy giving rise to the petition; and whether the petitioner has another remedy or avenue for review of the controversy.

The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, and Mr. Zakhem. Ms. Lottner voted in opposition to the motion. Ms. Siderius was absent for this portion of the public meeting.

Following a discussion of the fact that the Board did not intend for residency waivers to be permanent, Ms. Salkind made a separate motion to publish a special announcement on the Board's web site to the effect that once a vacancy is created for a position, the previous residency waiver with regard to that position is expired. Ms. Garcia seconded the motion. The motion passed by acclamation.

### **III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD**

- A. Dan Wells and Barry Rice v. Department of Higher Education, University of Colorado at Denver, Auraria Media Center, Auraria Library and Auraria Higher Education Center, State Personnel Board case number 2002B092(C).

Ms. Garcia moved to adopt the findings of fact and Conclusions of Law 1, 2, and 4, in the Initial Decision of the Administrative Law Judge, but to reverse the Administrative Law Judge on Conclusion of Law 3 ("Respondent Auraria Higher Education Center's actions, with regards to Complainant Rice, were arbitrary, capricious, or contrary to rule or law"). Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Zakhem, and Ms. Lottner. Ms. Salkind and Ms. Siderius abstained from voting.

- B. Susan Downey v. Community Colleges in Colorado, Arapahoe Community College, State Personnel Board case number 2003B109.

Ms. Siderius moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner.

- C. James Aragon v. Department of Corrections, Centennial Correctional Facility, State Personnel Board case number 2003B202.

Director Worthington recused herself from participation in the discussion of this case. Legal Assistant Sprague called the case number and the vote in lieu of the Director.

Mr. Zakhem moved to adopt the Order Granting Motion to Dismiss Appeal with Prejudice. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Mr. Zakhem, and Ms. Lottner. Ms. Siderius abstained from voting.

#### **IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING**

- A. Freddie Montoya, Jr. v. Colorado State University, University of Southern Colorado, State Personnel Board case number 2003G133.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner.

- B. Tony Roso v. Department of Transportation, State Personnel Board case number 2004G004.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Lottner seconded the motion. Mr. Zakhem and Ms. Lottner voted in favor of the motion. Ms. Garcia and Ms. Salkind voted in opposition to the motion. Ms. Siderius abstained from voting. A majority of the Board did not find that there were valid issues which merit a hearing. Therefore, the petition for hearing is denied.

#### **V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR**

- A. Frances Moore v. Department of Human Services, Lookout Mountain Youth Service Center, State Personnel Board case number 2003B112.

On November 13, 2003, a First Amended Initial Decision of the Administrative Law Judge was issued, which replaces the Amended Initial Decision and Initial Decision. The ALJ found that Respondent's disciplinary termination of Complainant was arbitrary, capricious or contrary to rule or law; ordered that Respondent's action is rescinded; and ordered Respondent to reinstate Complainant with back pay and benefits to the date of termination. On October 30, 2003, the ALJ issued an Amended Initial Decision, pursuant to a Protective Order entered by the ALJ, mandating that the identities of all juveniles at Lookout Mountain remain confidential.

- B. Denise Martinez v. Department of Personnel and Administration, Executive Office, State Personnel Board case number 2003B118.

On November 26, 2003, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's administrative termination of Complainant was not arbitrary, capricious or contrary to rule or law, and ordered that Respondent's action is affirmed.

- C. Daniel Romero v. Department of Human Services, Division of Youth Corrections, Gilliam Youth Services Center, State Personnel Board case number 2004B037.

On November 26, 2003, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's month reduction in pay for four months of Complainant was not arbitrary, capricious or contrary to rule or law, and ordered that Respondent's action is affirmed and Complainant's appeal is dismissed with prejudice.

- D. Julie Marble v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2003B134.

On December 1, 2003, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's disciplinary demotion of Complainant was not arbitrary, capricious or contrary to rule or law and ordered that Respondent's action, with clarification that Complainant is eligible to apply for a promotion in the future, is affirmed and Complainant's appeal is dismissed with prejudice.

## **VI. REVIEW OF THE MINUTES FROM THE NOVEMBER 18, 2003 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Ms. Siderius moved to approve the minutes of the November 18, 2003 meeting as submitted. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner.

## **VII. ACKNOWLEDGMENTS**

### **DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS NOVEMBER 18, 2003 PUBLIC MEETING:**

- A. Brandy Rogers v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2003B072.

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision.

- B. Jeffrey Verhey v. Department of Revenue, Taxpayer Services, State Personnel Board case number 2003G129.

The Board voted to adopt the Order Granting Respondent's Motion to Dismiss for Lack of Jurisdiction.

- C. Sam Biondolillo v. Department of Corrections, Centennial Correctional Facility, State Personnel Board case number 2003G140

The Board voted to adopt the Order of Dismissal.

- D. Kem Reliford v. Department of Transportation, State Personnel Board case number 2003G128.

The Board voted to adopt the Preliminary Recommendation of the Director and grant the petition for hearing.

## **VIII. REPORT OF THE STATE PERSONNEL DIRECTOR**

There was no report of the State Personnel Director given this month.

## **IX. ADMINISTRATIVE MATTERS & COMMENTS**

### **A. ADMINISTRATIVE MATTERS**

- Budget Report and Revenue and Expense Report
- Cases Scheduled for Preliminary Review
- Cases on Appeal to the Board and to Appellate Courts
- Appeal Dismissed in Shipley v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2001G029, Court of Appeals No. 02CA2271
- Order Affirmed in Koinis v. Department of Public Safety, State Personnel Board case number 2001B082, Court of Appeals No. 02CA1631

### **B. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC**

In addition to the above administrative matters, Director Worthington discussed the impending vacancy of the State Personnel Director's position due to her departure after January 2, 2004, stating that the announcement for the vacancy

of the Director's position had been posted on December 12, 2003, and interested parties were to apply by December 19, 2003. The announcement is also to be transmitted electronically to members of the bar associations, but has not yet been added to the "list serve." After applications are received, Human Resources personnel will review them for minimum qualifications, a written and oral examination will be held (if there are more than three applicants), and then interviews will be conducted. In the interim, Ms. Worthington stated that Administrative Law Judge Rozansky will bump up to four days per week and may cover administrative matters and that Mike Williams and/or Marshall Snider of the Division of Administrative Hearings (DOAH) have signatory power for the Board on budgetary issues. After mentioning that the legislature is moving along on its agenda, Ms. Siderius stated that she prefers that the Board not delegate or parcel out pieces of its functions, but rather she would like to see one person with signatory authority within the Board deal with day-to-day administrative matters. Noting that Jane Sprague is a full-time employee with little potential for conflict, since she is not an administrative law judge, Ms. Siderius moved that the signature authority be delegated to Ms. Sprague until a new director is appointed. Ms. Salkind seconded the motion, and the motion was carried by acclamation.

Ms. Worthington reported that with regard to the amendments to the whistleblower statute suggested by the Board, those amendments did not make it onto the governor's agenda, although all material which the Board requested to be transmitted to the governor and to the Department of Personnel and Administration (DPA) had been sent over by the Director, as directed by the Board. It was noted that the amendments went beyond the recommendations of the Civil Service Reform Commission.

Ms. Worthington also stated that the Director usually appears before the Oversight Committee in January and gives a report, which consists of a one-page handout and a short presentation. She stated that she would leave such a report for Ms. Sprague and Joyce Lottner to present to the committee.

With regard to rulemaking, Ms. Worthington reported that she received a call from Karen Fassler of DPA about changes to the performance pay system. DPA is issuing a notice of proposed rulemaking regarding changes to the administrative procedures on the performance pay system on December 19, 2003, and asked if the Board would like to make some changes regarding performance pay at the same time. An example of a change to be made is to Board Rule R-8-52 and the concept of total compensation, and other housekeeping matters involving nine or ten rules. After confirming with Pat Romero of DPA, who was in attendance, that postponing the Board's rulemaking would not "throw a monkey wrench" into DPA's rulemaking, the Board members indicated that they did not desire to schedule rulemaking at this time.

The final topic of discussion was the policy restricting firearms in the offices of the State Personnel Board, for which Board Counsel Forman had provided a

Confidential Memorandum to the Board members. At the beginning of the discussion, Ms. Siderius moved to waive attorney/client privilege with regard to the Confidential Memorandum. Ms. Salkind seconded the motion, and the motion passed by acclamation. After a discussion of the facts that the Board subleases space from DOAH, that the Board's existing policy prohibiting firearms in the courtroom is contrary to the requirements of SB03-024, and that an unconcealed weapon does not require a permit, the Board members indicated that the sign prohibiting firearms should be removed from the courtroom door and that the Confidential Memorandum be kept as a part of the notes of the meeting.

## **X. EXECUTIVE SESSION**

### **A. Case Status Report**

### **B. Minutes of the November 2003 Executive Session**

Without actually convening in Executive Session, Mr. Zakhem moved to approve the Executive Session Minutes from November 18, 2003, as submitted. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner.

In a separate vote, Mr. Zakhem moved to approve the second set of Executive Session Minutes from November 18, 2003, as submitted. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner.

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Having no more business, the meeting adjourned by consensus.

**APPROVED THIS 20th DAY OF JANUARY, 2004.**

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Joyce Lottner, Chair

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John Zakhem, Vice Chair

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Diedra Garcia, Member

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Elizabeth Salkind, Member

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Linda Siderius, Member